2015 UT 2

IN THE

SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,
Respondent,

v.

EDWARD JOSEPH STRIEFF, JR.,
Petitioner.

No. 20120854
Filed January 16, 2015

On Certiorari to the Utah Court of Appeals

Third District, Salt Lake
The Honorable Michele M. Christiansen
No. 071900011

Attorneys:

Sean D. Reyes, Att'y Gen., Jeffrey S. Gray, Asst. Att'y Gen., Salt Lake City, for respondent

Joan C. Watt, Robert K. Engar, Salt Lake City, for petitioner

JUSTICE LEE authored the opinion of the Court, in which CHIEF JUSTICE DURRANT, ASSOCIATE CHIEF JUSTICE NEHRING, JUSTICE DURHAM, and JUSTICE PARRISH joined.

JUSTICE LEE, opinion of the Court:

¶1 In this case we are asked to determine the applicability of the "attenuation" exception to the exclusionary rule to a fact pattern addressed in a broad range of lower-court opinions but not by the United States Supreme Court. The essential fact pattern involves an unlawful detention leading to the discovery of an arrest warrant followed by a search incident to arrest. The attenuation inquiry is essentially a proximate cause analysis. It asks whether the fruit of the search is tainted by the initial, unlawful detention, or whether the taint is dissipated by an intervening circumstance. As applied to the outstanding warrant scenario, the question pre-

sented is whether and how to apply the attenuation doctrine in this circumstance.

¶2 The lower courts are in disarray in their application of the attenuation doctrine to the outstanding warrant scenario. In some courts the discovery of an outstanding warrant is deemed a "compelling" or dispositive "intervening circumstance," purging the taint of an initially unlawful detention upon a showing that the detention was not a "purposeful" or "flagrant" violation of the Fourth Amendment.[1] In other courts, by contrast, the outstanding warrant is a matter of "'minimal importance,'" and the doctrine's applicability is strictly curtailed.[2]

¶3 We adopt a third approach. We conclude that the attenuation exception is limited to the general fact pattern that gave rise to its adoption in the United States Supreme Court—of a voluntary act of a defendant's free will (as in a confession or consent to search). For cases arising in the context of two parallel acts of police work—one unlawful and the other lawful—we interpret the Supreme Court's precedents to dictate the applicability of a different exception (inevitable discovery).

¶4 Our holding is rooted in our attempt to credit the terms of the attenuation doctrine as prescribed in the Supreme Court's opinions, while also respecting the parallel doctrine of inevitable discovery. Thus, we read the Court's attenuation cases to define the conditions for severing the proximate causal connection between a threshold act of police illegality and a subsequent, intervening act of a defendant's free will. And in the distinct setting of both unlawful and then lawful police activity, we deem the inevitable discovery doctrine to control. Because this case involves no independent act of a defendant's free will and only two parallel lines of police work, we hold that the attenuation doctrine is not implicated, and thus reverse the lower court's invocation of that doctrine in this case.

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[1] *United States v. Green*, 111 F.3d 515, 522, 23 (7th Cir. 1997).

[2] *State v. Moralez*, 300 P.3d 1090, 1102 (Kan. 2013) (quoting *State v. Hummons*, 253 P.3d 275, 278 (Ariz. 2011)).

I. Background

¶5 In December, 2006, an anonymous caller left a message on a police drug tip line reporting "narcotics activity" at a South Salt Lake City residence. Police officer Douglas Fackrell subsequently conducted intermittent surveillance of the residence for approximately three hours over the course of about one week. During that time, the officer observed "short term traffic" at the home. The traffic was not "terribly frequent," but was frequent enough that it raised Officer Fackrell's suspicion. In Officer Fackrell's view, the traffic was more than one would observe at a typical house, with visitors often arriving and then leaving within a couple of minutes. Thus, the officer concluded that traffic at the residence was consistent with drug sales activity.

¶6 During his surveillance of the residence, Officer Fackrell saw Edward Strieff leave the house—though he did not see him enter—and walk down the street toward a convenience store. As Strieff approached the convenience store, Officer Fackrell ordered Strieff to stop in the parking lot. Strieff complied. Officer Fackrell testified that he detained Strieff because "[Strieff] was coming out of the house that [he] had been watching and [he] decided that [he'd] like to ask somebody if [he] could find out what was going on [in] the house." Officer Fackrell identified himself as a police officer, explained to Strieff that he had been watching the house because he believed there was drug activity there, and asked Strieff what he was doing there.

¶7 Officer Fackrell also requested Strieff's identification, which Strieff provided. Officer Fackrell then called dispatch and asked them to run Strieff's ID and check for outstanding warrants. Dispatch responded that Strieff had "a small traffic warrant." Officer Fackrell then arrested Strieff on the outstanding warrant and searched him incident to the arrest. During the search, the officer found a baggie of methamphetamine and drug paraphernalia in Strieff's pockets.

¶8 Strieff was charged with unlawful possession of methamphetamine and unlawful possession of drug paraphernalia. He moved to suppress the evidence seized in the search incident to his arrest, arguing that it was fruit of an unlawful investigatory stop. The State conceded that Officer Fackrell had stopped Strieff without reasonable articulable suspicion (given that Officer Fackrell had not seen Strieff enter the house, did not know how long he had been there, and knew nothing of him other than that